89-426

NO. _____

Supreme Court, U.S.
FILED
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CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

Conservatorship of the Person and Estate of MARTHA SWEET,

JUNE MCGEE,

PETITIONER

VS.

GORDON TREHARNE, PUBLIC GUARDIAN

RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA AND TO THE COURT OF APPEAL, SECOND APPELLATE DISTRICT

JUNE MCGEE, ESQ.
1645 E. California Blvd.
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Petitioner

QUESTIONS PRESENTED

1. Can elderly persons be permanently deprived of their liberty and property without trial on the merits?

2. Are elderly persons entitled, as a matter of constitutional due process,** to a jury trial, when it is requested and paid for in the Probate Court, before a government agency can take permanent custody of them and their assets?** (Fourteenth Amendment due process).

3. Can family members, holding a proper durable power of attorney over an elderly parent, granted many years ago by that parent, be deprived of the rights granted to the custody of the parent and her assets, without notice and trial on the merits?

4. Has petitioner been denied her Fourteenth Amendment constitutional rights of due process and equal

protection by the order of the California Probate Court on June 12, 1987, which granted permanent Letters of conservatorship over her mother to the Public Guardian, without prior notice to her when the petitions for conservatorship were not even on calendar for June 12?

5. Is 15-day notice, given in 1985, of a jury trial, requested and paid for, [in connection with a petition for conservatorship], still valid two years later, when it has been continued month after month after month for two years and then suddenly, without any new notice, without any at-issue memorandum, without any pre-trial conference, and the petition isn't even on calendar, the court on its own brings up the issue and makes a final order which deprives petitioner of her right to a jury trial?

6. Is it due process when a week

after the Court on its own motion brought up the issue of conservatorship [not on calendar] and ruled on it, for this same Court to again bring up the issue of conservatorship a week later, when it would have been on calendar except for the prior ruling, and again rule on it without notice?

7. Is it due process for the Court to order that the court records of the first hearing [June 12, 1987] be "supplanted" [falsified] to eliminate the fact that Letters were granted on that date, mooting the petitions, and that the order of the second hearing [June 19, 1987] falsely state that the letters were granted for the first time at the second hearing with full notice?

8. Did the falsification of the orders of June 12, 1987, and of June 19, 1987, by the Probate Court, County Counsel, and Respondent, constitute

error per se, necessitating reversal of said Orders by the Supreme Court of California?

9. Can a government agency, supported by a powerful Probate Court and represented by County Counsel, seize an elderly person and confiscate their assets, a person never declared legally incompetent, in the absence of emergency, consent, or any crime, without any court order for removal, on the basis of temporary Letters of Conservatorship, secretly obtained, without notice or trial to her or her family, and non-appealable by State Probate law, and continue to hold custody of her away from her family for three years, refusing any trial on the merits, and then have the Probate Court grant permanent Letters [custody] again without any notice or trial on the merits of her initial seizure or

continuing custody?

10. Is an error "harmless", [granting permenent Letters of Conservatorship on June 12, 1987, when the petitions were not even on calendar and not before the Court] as held by the Court of Appeals, an "error" that mooted petitioner's right to a jury trial over the custody of her mother, an error that involves a constitutional deprivation, permanently depriving a person of her liberty and property without any notice or trial?

11. Was "notice", (15 days) as set forth by the California Probate Code, Sec. 1822 and by the Fourteenth Amendment, impossible for the hearing on June 19, 1987 because the matter had been mooted on June 12, 1987, when the Probate Court gratuitously granted conservatorship to the respondent?

12. Is the Probate Code, Section 1822, (15 days notice), as interpreted by the State Court of Appeal, affirmed by the California Supreme Court, in violation of the Fourteenth Amendment, when it is held to mean that Section 1822 notice given in 1985 is sufficient notice for a "trial" when the judge suddenly decides to hold one two years later, in 1987, after months and months of continuances, and makes a decision when the matter is not even on calendar, and then one week later, when the trial might have been on calendar, except for the previous order, again arbitrarily brings up the issue he had ruled on the preceeding week and again grants the same order, without any at-issue memorandum, or pre-trial conference, and without any other notice to petitioner that she should bring all her witnesses on either date for trial?

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RESPONDENT *

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA AND TO THE COURT OF APPEAL:

PETITIONER HEREBY PETITIONS that a Writ of Certiorari be issued to review the Order of the Supreme Court of the State of California, filed May 3, 1989, which upheld the granting of permanent Letters of Conservatorship over petitioner's mother, Martha Sweet, to

* L.A. County Public Guardian, Treharne, c/o D. W. Clinton, County Counsel, 500 W. Temple St., Rm. 648, L.A., CA 90012

the Los Angeles Public Guardian, respondent herein, on June 12, 1987, and June 19, 1987, both times without notice trial or hearing to petitioner, when the petitions for conservatorship were not even on calendar. The granting of permanent Letters of Conservatorship on June 12th mooted petitioner's Petition for Conservatorship and denied her the jury trial she had requested and paid for to determine the custody matter. Petitioner had previously repeatedly moved the Probate Court to set a date for a trial on the merits of the seizure and continuing custody of her mother, and had appealed the Court's refusal to set a date for the trial on the merits to the State Supreme Court. (Denied in 1986).

Petitioner respectfully asks this Court to command the lower Court to reverse the Order of the Probate Court of June 19, 1987, and to order the lower

Court to set a date for a trial on the merits of the custody of Martha Sweet and the confiscation of her assets by the Los Angeles Public Guardian, respondent herein.

OPINIONS BELOW

The order of the California Supreme Court, dated May 3, 1989, denying Petitioner's Petition For Review, issued without opinion, is set forth in the appendix at page App. 1. The Order and opinion of the Court of Appeal of the State of California, Second Appellate District, dated February 9, 1989, is set forth in the appendix at page App. 2.

The Order of the Supreme Court denied Petitioner's appeal from both the Order of denial by the Court of Appeal, dated February 9, 1989, and the denial by the Court of Appeal, dated March 10, 1989, of Petitioner's Petition For Rehearing and For Writ of Error Coram

Vobis. (Denied, no opinion).

In all of the above, petitioner was appealing from two orders, dated June 12, 1987, and June 19, 1987, of the State Probate Court which granted permanent Letters of Conservatorship [custody of the person and estate] of petitioner's mother to the Los Angeles Public Guardian, respondent herein. Said permanent Letters of Conservatorship over Martha Sweet were granted on June 12, 1987, and June 19, 1987, both times without notice or trial on the merits to petitioner who had filed a petition for conservatorship in 1985, requesting and paying for a jury trial. See App. .

A thirty day extension of time in which to file this Petition until August 31, 1989, was granted by Justice Sandra Day O'Connor, No. A-79, July 27, 1989.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257.

STATUTES INVOLVED

The statutes involved are 28 U.S.C. Section 1257, the jurisdictional statute, the Fourteenth Amendment to the United States Constitution, and the Probate Code Section 1822, (a), which states:

> "At least 15 days before the hearing on the petition for appointment of a conservator, notice of the time and place of the hearing shall be given as provided in subdivisions (b), (c), and (d). The notice shall be accompanied by a copy of the petition."

The California Court of Appeals, Second Appellate District, upheld by the California Supreme Court, has interpreted this "15-day notice" to include, continuances for over two years, without any new notice that at some hearing, after years of

continuances, the party notified two years earlier should bring all her witnesses [over 50] and be prepared to go to trial, that the two years old notice is good even when the court brings up the issue when it is not on calendar and makes a ruling, in the absence of any at-issue memorandum or pre-trial conference, exchange of witness lists, documents, etc.

Petitioner maintains that this interpretation and practice of the California Supreme Court violates Fourteenth Amendment due process, particularly when one can be deprived permanently of their liberty and property without trial or notice.

STATEMENT OF THE CASE

The detention complained of by your Petitioner arose out of process issued by the State Probate Court, in case No. P700 713, IN THE MATTER OF THE

CONSERVATORSHIP OF MARTHA SWEET. On August 7, 1985, said Probate Court secretly, without notice to petitioner or to her mother, issued temporary Letters of Conservatorship to the Los Angeles Public Guardian over the person and estate of Martha Sweet, 97 year old mother of petitioner. Bedridden and senile, she had resided for years with petitioner, her only child, her two granddaughters and their father in petitioner's home.

Petitioner had a full-time practical nurse taking care of her mother, Gayla Catena, who came six days a week, and visiting professional nurses, who came twice a week. Petitioner also had a doctor who made house calls on a monthly basis and supervised the home care. All have testified at depositions or submitted written statements as to the excellent quality of the home care.

On August 8, 1985, a Deputy Public Guardian led by a police officer, with hand on gun, broke into the home of petitioner and over the objections of the entire family, seized Martha Sweet. The police knocked petitioner down when she asked for a search warrant. They threatened to search every room in the house until they found Martha Sweet. They had no court order for removal and no search warrant. The paramedics they called refused to remove Martha Sweet because they said there was nothing wrong with her and she refused to leave. However the public guardians, social workers, once having broken into the house insisted that the temporary Letters they had secretly obtained gave them the right to remove Martha Sweet. Later they attempted to justify said removal by claiming that the attending physician told them there was a medical

"emergency."

At his deposition the attending physician, Dr. Dahl, denied he told them that there was such an emergency. Also the doctor [Snyder] who examined Martha Sweet upon their returning her to the hospital stated at his deposition, that not only was there no "emergency", but there was not even any "urgency".

Further the handwritten records of the deputy public guardian who seized her [it took petitioner two years to force respondent to produce these records and a federal court order] show that the attending physician told said deputy three days before seizure that the family took "great care" of their mother, the "best possible care".

All doctors [Dahl, McKay, Schweitzer] familiar with the home care, as well as the practical nurse have stated at depositions or in written

statements that the home care was "excellent", "loving", not "negligent".

The reason for the violent removal of Martha Sweet was a vindictive Deputy Public Guardian who had unsuccessfully tried to bully his way into petitioner's home the previous week, when her daughter was there alone. He conspired with a doctor who was having a fee dispute with petitioner and had the Probate Court secretly grant the temporary Letters of Conservatorship to respondent Public Guardian.

Subsequently the Public Guardian, at a hearing on August 15, 1985, also not noticed to petitioner, who found out accidentally two days prior, had the Probate Court ratify the temporary Letters and the removal of Martha Sweet.

At this hearing perjured testimony was used and the Probate Court, saying it was a "non-adversarial" hearing,

refused to allow petitioner or her attorney to cross-examine the witness, a third year resident who worked with the doctor petitioner was having the fee dispute with. The court allowed said resident to read what he claimed were the medical records of Martha Sweet into evidence, records, purporting to show negligent home care. Petitioner and her attorney were not allowed to see them and it took petitioner almost two years to get the records.

When petitioner finally sued respondent in the federal Court and obtained the records, they showed just the opposite of what the witness had said they showed, under oath.

When petitioner went back into the Probate Court and asked the Court to reverse the orders of conservatorship based upon this perjured, false testimony, the judge refused to rule on

the motion, in violation of the Civil Code, Duty to Decide, took the matter off calendar on his own motion and got up and walked out of the courtroom.

Later petitioner's motion to have this Probate judge removed from the case was denied. It is this same judge, who worked closely with County Counsel and with respondent, who gratuitously brought up the petitions for conservatorship on June 12, 1987, when they were not even before the Court and granted permanent Letters of Conservatorship to respondent, denying petitioner's petition without notice or jury trial [petitioner had requested and paid for a jury.] Then, after learning that said petitions were not even scheduled to be before the Probate Court until June 19, 1987, the Court, on June 19, 1987, when petitioner was there on another matter, again gratuitously

brought up the petitions and again over petitioner's objections, gratuitously ruled. He granted permanent letters to respondent and ordered County Counsel to "supplant" the previous order of June 12, 1987, wherein he had a week earlier, granted permanent Letters to respondent. He ordered County Counsel to eliminate that order and instead make the Order of June 19, 1987, read as if the permanent Letters were granted on the 19th for the first time with full notice to petitioner. Petitioner's protest that the petitions were moot because they had been ruled on a week earlier, on June 12th, was ignored.

This same judge told petitioner that she should "be nice" to county counsel and "massage him" a little if she wanted to get her mother back.

On August 13, 1985, the Probate court replaced petitioner as her

mother's attorney. Again this was done secretly, without notice or hearing to petitioner, who was not present. Petitioner was replaced with a court-appointed attorney who was selected off a list in the Probate Department. She has acted in this capacity, working with the Public Guardian many times before and always rubber-stamps respondent and its counsel, County Counsel. She is in a conflict of interest with Martha Sweet, her client, because she knows that if she takes a position contrary to respondent's, she may never receive another appointment from the Probate Department again.

On September 10, 1985, the Probate Court, again secretly without notice to petitioner, who was not present, suspended petitioner's durable power of attorney whereby Martha Sweet years ago

in the presence of four witnesses, made a gift of what remained of her assets to petitioner and gave petitioner a durable power to make all health care and financial decisions for her mother.

Petitioner filed a petition for conservatorship in the Probate Court, and after one year of discovery, all paid for by petitioner, it became obvious that petitioner would win custody at any objective trial on the merits. Petitioner then twice moved the Probate Court to set a date for a hearing on the merits on the petitions for permanent Letters of Conservatorship. Again in violation of the Probate Code, which mandates a hearing on temporary Letters within six months, the Probate court denied the motions. Petitioner appealed the denial to the State Court of Appeal and to the State Supreme Court. Said appeals were

denied summarily, by postcard, without hearing or comment.

FEDERAL LAWSUIT FOR CIVIL RIGHTS VIOLATIONS FILED.

After petitioners' repeated motions, asking for a trial on the merits as to who should be conservator were denied in the Probate Court, petitioner filed suit, McGee v. County of Los Angeles et al., CV86-3322 RMT, in the federal Court against respondent, the doctors, police, etc., for conspiracy to deprive Martha Sweet, petitioner, and her family of their civil rights, 42 U.S.C. Sec. 1983, 1985, 1986, also for kidnapping, false imprisonment, conversion, trespass, assault, battery, slander, etc. The complaint withstood 22 briefs filed in opposition for Rule 12 motions to dismiss.

RESPONDENT RETALIATES TO FEDERAL CIVIL RIGHTS LAWSUIT.

At this point, respondent retaliated by filing citations and subpoenas against petitioner, her family and witnesses, alleging "concealment" of the assets of Martha Sweet, totally ignoring the legal, witnessed durable power of attorney and gift which petitioner had from her mother, made years before. This is respondent's effort to harrass and intimidate petitioner and prevent her from pursuing her civil rights lawsuit in the federal court.

Subsequently on June 12, 1987, the Probate Court gratuitously granted permanent Letters of Conservatorship to the Public Guardian. The matter was not even before the Court. Instead a motion by petitioner was pending to remove the Public Guardian as conservator because of the physical abuse Martha Sweet received under respondent's care since seizure. [The State Department of Health

cited and fined the convalescent hospital where the Public Guardian placed Martha Sweet because she was physically bruised and beaten at least twice at that hospital.]

Instead the Probate Court did not even look at or discuss petitioner's evidence. It gratuitously brought up the petitions for conservatorship and granted the petition of respondent, Public Guardian, giving respondent permanent custody without any notice or trial whatsoever to petitioner.

In the week that followed, the Court realized its error, and on June 19, 1987, when the petitions would have been before the Court if they had not been mooted on June 12th, the Court again brought up the petitions, as though there had been no ruling at all on June 12th, and again without notice or jury trial, granted respondent permanent

letters of conservatorship, again over petitioner's objections.

Petitioner asked the court to hold up on any such ruling because of the federal civil rights case. The Court refused.

ORDERS FALSIFIED:

On June 19th, the Court ordered Deputy County Counsel representing the Public Guardian to "supplant" the order of June 12th, and to eliminate from it the fact that the permanent Letters were granted on that date. The Court told respondent's counsel to prepare the order for June 19, 1985, to show that permanent Letters were granted on that date for the first time with full notice to petitioner and opportunity for a trial.

The certified reporter's transcript of the hearings on June 12 and June 19, 1987, prove indisputably that this is

not true, that there was no notice or hearing on the merits on either date. Respondent does not deny that permanent Letters were granted on June 12, 1987. But it attempts to maintain that the regranting on June 19th was legal.

PETITIONS FOR HABEAS CORPUS DENIED

Petitioner filed multiple petitions for habeas corpus, which were denied summarily by the Probate Court, the Court of Appeal and the State Supreme Court, denied by postcard, without hearing or comment. In the federal court, the first was denied because settlement discussions were in progress. The second was denied by the Ninth Circuit because of an alleged one day late filing. The third was denied because the district Court did not issue a Certificate of Probable Cause, alleging that petitioner's mother, a senile adult, is not considered "in

custody" for purposes of the habeas statute. Petitioner appealed for a Certificate of Probable Cause to this Court, where it was denied.

PETITIONS FOR REMOVAL TO FEDERAL COURT

Petitioner then filed petitions for removal of the Probate case to the federal court, under 28 U.S.C. Section 1443, because of her inability to enforce civil rights in the State court. These petitions [two] were denied by the Ninth Circuit, on the grounds that petitioner had not shown racial discrimination, Georgia v. Rachel, 384 U.S. 780 (1966).

NEW SECRET TEMPORARY LETTERS

On July 22, 1987, when respondent learned that petitioner was appealing the orders of June 12, 1987, and June 19, 1987, the instant case, it obtained new temporary Letters of Conservatorship, again secretly without

notice, trial or hearing to petitioner, who did not find out about them until long after, when respondent filed its answer to the order of the District Court to show cause regarding the habeas.

The Probate Court issues letters of conservatorship instantly on the order of the Public Guardian faster than petitioner can appeal them, secretly without notice, trial or hearing, despite the fact that petitioner has two requests for notice on file in the Probate Court.

IT IS WELL ESTABLISHED PROCEDURE AND PRACTICE OF THE PUBLIC GUARDIAN TO SEIZE ELDERLY PERSONS THOUGHT TO POSSESS CONSIDERABLE ASSETS.

It is the well-established custom and procedure of respondent to seize elderly incompetent persons, thought to possess considerable assets. Respondent

has been examined by the L.A. Grand Jury for allegedly misappropriating the assets of its conservatees. It pays itself from their assets and its payroll and power is enhanced by the amount of conservatees' funds it controls. [Petitioner has always supported her mother without accepting any local, County or State aid.]

REASONS FOR GRANTING THE WRIT

At the present time Martha Sweet has been held for three years without trial on hearing on the merits. Her assets have been confiscated and her person physically abused under the control of the Public Guardian. She is a hostage of the civil rights lawsuit pending in the federal court. The Public Guardian holds her in custody as a "bargaining chip", to cover up its own wrong-doing in seizing her in the first place. It refuses to release her to her family

despite the fact that all the doctors and the practical full time home nurse employed by petitioner have stated under oath that the home care was "loving", "the best possible", "great". Respondent's position is that petitioner can have custody of her mother back only if she ends the civil rights law suit.

PETITIONER HAS NO OTHER REMEDY LEFT AS TO CUSTODY OF HER MOTHER, IF THIS COURT DENIES THIS PETITION.

Petitioner has a civil rights lawsuit pending in the federal District Court, McGee v. County of L.A., CV86-3322 RMT (Kx), but even if she succeeds, it would still be necessary for State court decision on custody, traditionally a State court [family law] matter. The Probate Court has shown that it will not honor the jurisdiction of the federal court. When petitioner petitioned for removal and properly

bonded, served her petition on the Probate Court, which automatically ends its jurisdiction until remand, the Probate Court ignored the entire matter, and went right ahead with its hearings, in violation of 42 U.S.C. Sec. 1446.

THE REPORTER'S CERTIFIED RECORD OF THE JUNE 12, 1985 HEARING SHOWS BEYOND QUESTION THAT PERMANENT LETTERS WERE GRANTED BY THE PROBATE COURT ON JUNE 12TH ARBITRARILY, WITHOUT NOTICE, TRIAL OR HEARING ON THE MERITS AND THAT THE PETITIONS FOR CONSERVATORHSIP WERE NOT EVEN BEFORE THE COURT ON THAT DAY.

Page 1904, line 7, shows the granting of the permanent letters:

THE COURT: THANK YOU. WILL YOU PREPARE AN ORDER?

MR. MILLER [Deputy County Counsel]: YES, I WILL. JUST FOR THE SAKE OF CLARITY YOUR HONOR IS MAKING A PERMANENT APPOINTMENT OF THE PUBLIC GUARDIAN?

THE COURT: YES . . .

The Court of Apeals is in error: petitioner's counsel, Mr. Sam Frizell, made objections to the order on June 12th: line 24, of the June 12, 1987 transcript, pp. 1903:

Mr. FRIZELL: YOUR HONOR, I APPRECIATE THAT, AND I AGREE, BUT WE HAVE HAD PENDING AN OBJECTION TO PETITION FOR THIS PERMANENT GUARDIANSHIP. . .

THE COURT: I'M WELL AWARE OF THAT.

Petitioner wishes to stress that the Court admits it knew that the Petitions for Conservatorship were not continued to this [June 12, 1987] date, and were not before the Court. P. 1903, line 26, of the June 12th transcript:

MR. MILLER: YOUR HONOR, IF I MAY FOR THE PURPOSES OF CLARIFICATION. I THINK MR. FRIZELL--I WAS NOT PRESENT AT THE LAST HEARING WHICH WAS HELD LAST FRIDAY,

I BELIEVE, WHICH WAS A CONTINUATION, I'M NOT CLEAR THAT ALL THOSE MATTERS IN DEPARTMENT 5 WERE CONTINUED TO THIS DATE.

THE COURT: THEY WEREN'T.

The fact is that respondent does not deny that the permanent Letters were granted on June 12th or that Deputy County Counsel Miller, a defendant in petitioner's federal civil rights case, falsified the order of June 12th to eliminate the fact that the permanent Letters were granted on that date without notice or trial to petitioner when the petitions were not even before the Court. [Respondent's brief admitted falsification. p. 12, line 7].

LAST REMEDY:

Petitioner has filed three motions for habeas corpus to free her mother from this Respondent, all have been denied on procedural grounds. Respondent

objected on the grounds that petitioner had not exhausted all remedies, pursuant to Rose v. Lundy* because the petitions for permanent conservatorship were pending, whereby petitioner could have a trial on the merits of custody of her mother. Petitioner has conducted much discovery, at least 30 depositions and intended to have a complete hearing on the merits. Now instead respondent has with the collusion of the Probate Court parlayed the temporary Letters, which cannot be appealed, into permanent letters, still without any notice or trial on the merits to petitioner.

Respondent argues that no hearing or trial is necessary: the Probate Court can simply "update" temporary letters, themselves issued without notice, trial or hearing, based upon falsified documents and perjured testimony.

This is an obvious attempt by

*455 U.S. 509 (1982)

respondent to make "an end run" around the clear meaning and intent of the 15 day notice Rule of the Probate Code as well as around the United States Constitution, Amendments 5 and 14 that no person can be deprived of their liberty or property without proper hearing, due process, notice and equal protection by an objective court.

Respondent knows that petitioner can prove "excellent" care at home and is entitled to preference as conservatee. It also knows that Martha Sweet herself, in a fully witnessed document chose petitioner as her "nominee" to be conservator if her mother became incompetent.

Respondent repeats the same, slanderous, false old lies about the negligent home-care, about "rescuing" Martha Sweet, etc., despite the fact that discovery, depositions of the

doctors familiar with the home care, showed to be false long ago. If the home care were that bad, why is respondent so afraid of a trial on the merits? Why has respondent vigorously objected to any trial on the merits, any opportunity for petitioner to present her witnesses and her evidence?

Respondent repeats these same lies in every brief as though they were proven facts, in order to prejudice the court against petitioner. As long as there is no trial, respondent can get away with this deception. The sad part is that the Court of Appeals quotes these lies in its Opinion as those they were proven facts, justifying its decision not to allow any trial on the merits to petitioner. If given a trial on the merits, petitioner can and will disprove every allegation made by respondents. The attending physicians

have stated that the home care was "the best possible". One physician stated at his deposition that he at his own home could not have taken better care under the circumstances.

Respondent has succeeded because of a Probate Court that acts as one with county counsel and respondent, Public Guardian. There is an "incestuous" relationship between the Probate Court and these agencies, which appear before the Court every day repeatedly. Respondent-defendant Treharne, former Public Guardian, was a lawyer in the office of County Counsel before becoming Public Guardian, and now that he has been removed [at the request of the Board of Supervisors], he has returned to the office of County Counsel.

The collusion of the Probate Court and respondent in this case is obvious: proof is the fact that the Probate court

will go to these lengths, actually ordering County Counsel to falsify orders and dates to protect respondent and county counsel [a defendant in the federal civil rights case] and to deprive petitioner of her long requested trial on the merits of custody of her mother.

Also the fact that petitioner has to bring an issue such as this, involving a court's violation of the most basic of all rights guaranteed to all citizens, involving deprivation of liberty and confiscation of assets without notice or trial, to this level of adjudication, to the highest Court in the Land, speaks for itself about the state of appellate review in California, and the insensitivity to the constitutional rights of elderly people and their families.

RESPONDENT'S POSITION THAT THE

NOTICE OF A TRIAL, RECEIVED BY PETITIONER IN AUGUST 1985 WHEN MARTHA SWEET WAS ORIGINALLY SEIZED, SOMEHOW CONTINUED UNTIL JUNE 19, 1987, WITHOUT ANY AT-ISSUE MEMORANDUM, EXCHANGE OF WITNESS LISTS, PRE-TRIAL CONFERENCE, ETC., IS UNREALISTIC AND FRIVOLOUS

First, petitioner never agreed to a two year continuance of the petitions for conservatorship. Petitioner moved the Probate Court twice to set a date for a trial on the merits, both motions denied by the Probate Court and subsequently appealled through to the State Supreme Court, again denied without hearing or comment.

Second, even if one accepts this ludicrous position, that "notice" continues without further mention, for over two years, the date for continuation of the petitions for conservatorship was not June 12, 1987.

It was June 19, 1987. The reporter's transcript shows that on June 12th, when the petitions were not before the Court, it granted the permanent letters and thereby mooted the petitions.

How could petitioner possibly be expected to know that the petitions once granted on June 12th would be brought up again on June 19, 1987, a date set for a hearing on another matter [citations]? It was impossible to give 15 day notice because there are only 7 days between June 12th, and June 19th, 1985.

As far as petitioner was aware, the petitions were ended on June 12th, and her only remedy was appeal. [Permanent letters, not temporary, can be appealed under the Probate code.] To claim that petitioner should have showed up in the Probate Court on the 19th, a week later with all 50 witnesses, ready for trial on a matter that had already been

decided on the 12th, is totally fraudulent.

THE GRATUITOUS GRANTING OF PERMANENT LETTERS OF CONSERVATORSHIP WITHOUT NOTICE, TRIAL OR HEARING TO PETITIONER WAS IN VIOLATION OF HER CONSTITUTIONAL RIGHTS TO NOTICE, DUE PROCESS, EQUAL PROTECTION, THE FIFTH AND FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION.

"Both the Fifth and Fourteenth Amendments protect against the deprivation of "life, liberty, or property without due process of law." The Due Process Clause is most often used to provide procedural safeguards to persons accused of crime. But due process also protects interests outside the criminal context." Moore v. City of East Cleveland, 431 U.S. 494 (1977).

PETITIONER WAS ENTITLED NOT ONLY TO ACTUAL NOTICE BUT ALSO SHOULD HAVE BEEN GIVEN AN OPPORTUNITY TO BE HEARD. That is, a chance to defend against claims against herself which resulted in the taking of her interests, both personal and property interests, in the custody

and assets of her mother. This hearing requirement is well-established, imposed by the Due Process clause of the Fourteenth Amendment. See, e.g., Roller v. Holly, 176 U.S. 398 (1900).

PETITIONER IS ENTITLED TO A TRIAL WITH A JURY, TO NOTICE AND TO THE SAME DUE PROCESS STANDARDS REQUIRED IN A CRIMINAL TRIAL.

In Conservatorship of Benevenuto (1986) 180 Cal. App. 3d 1030, 226 Cal. Rptr. 33, the court held that the proposed LPS conservatee must be given notice of his right to a jury trial and that criminal due process standards apply to involuntary commitments to a hospital for the mentally ill. This case is in point because Martha Sweet herself decided who should be her care-taker, [her durable power of attorney] and a commitment contrary to her wishes is "involuntary".

In People v. Wende (1979) 25 Cal. App. 3d 4436, 158 Cal. Rptr. 839, the Court held that the liberty interests involved in civil commitment proceedings are no less fundamental than those in criminal proceedings.

Respondent now tries to deny that petitioner is entitled to a jury, despite the fact that petitioner requested one years ago and paid for it.

At first respondent agreed that petitioner could have a jury, but now after all discovery proves that the care by appellant of her mother was "great", [attending physician's word], now respondent vigorously objects to any trial on the merits by a jury.

Respondent, seeking to cover-up its own wrong-doing in seizing and continuing to hold Martha Sweet, brings this objection up for the first time on appeal. This is too late: respondent

has waived its right to object. It cannot raise this issue on appeal for the first time, Chiarella v. U.S. 100 S. Ct. 1108 (1980).

Further the instant case involves criminal acts by respondent, who broke into the home appellant without a search warrant and without a court order for change of residence, in the absence of emergency or consent of the residents, and who took custody, literally kidnapped the conservatee and converted her assets. This High Court has held that the Fourteenth Amendment guarantees a right of jury trial in all state criminal cases which, were they to be tried in federal court, would come within the Sixth Amendment's guarantee. Duncan v. Louisiana, 391 U.S. 145, 88 S. Ct. 1444, 20 L. Ed. 2d 491. The instant case is such a quasi-criminal action.

This Respondent seeks to cover-up

its wrong-doing by denying a trial on the merits to petitioner of any kind, jury or otherwise.

The ultimate issue here is whether the liberty interests involved in civil commitment proceedings of elderly, senile persons are less fundmental than those of persons accused of criminal activities.

THE INTERPRETATION OF PROBATE CODE SECTION 1822, [15 DAY NOTICE RULE] BY THE CALIFORNIA SUPREME COURT IS A VIOLATION OF THE FOURTEENTH AMENDMENT DUE PROCESS AND EQUAL PROTECTION.

The petitions for conservatorship were not before the Probate Court on June 12, 1985. There is no dispute on that fact or on the fact that the Letters were granted on the 12th, or on the fact that the Court ordered County Counsel to falsify the orders of June 12, and June 19, 1985. [Clerk's

certified transcripts prove this beyond question.].

Even if the granting of permanent Letters on June 12, 1985, did not "moot" the petitions, as respondent now belatedly claims, and even if there had been no granting of permanent Letters on June 12th, 1985, whatsoever, it still is a violation of the Fourteenth Amendment rights of petitioner to interpret a rule mandating no less than 15 days notice of trial to cover a "notice" that extends to two years, absent at-issue memorandum, trial setting conference, pre-trial conference, and all other regular procedures that every other case going to trial receives.

Aside from "notice", where is equal protection" here? Why are trials involving such important issues as custody, care of an individual and the taking of his assets, not entitled to

the same procedural standards as a trial about a contract dispute over the price of widgets between vendors?

And why are the rights of the elderly to equal protection and due process less important that the rights of persons suspected of criminal activity?

The interpretation by the California Supreme Court and Court of Appeal of the notice-requirement of Probate Code 1822, means that Probate Code 1822 is in violation of the Fourteenth Amendment. Respondent, Public Guardian, a powerful government agency represented by County Counsel, at taxpayer expense, and supported by the State courts, can seize, without any prior notice or hearing to the person or his family, any elderly person on the basis of secretly obtained temporary Letters of Conservatorship, which are not

appealable, Probate Code 2750. Said government agency can then hold that person indefinitely for years, refusing any noticed trial on the merits of the seizure or continuing custody, and then after endless continuances, respondent can arbitrarily, based upon a "notice" which is two years old, without any pre-trial conference, or meeting of counsel, or exchange of witness lists and documents, that every other trial receives, years later, suddenly bring up the issue of custody [conservatorship] in the Probate Court and have it granted, depriving both the proposed conservatee and her family of any hearing whatsoever, despite a request for a jury, paid-for, and lengthy, expensive discovery by the family, 30 depositions, and a carload of documents.

The only way petitioner can avoid being taken by surprise is to have all

her witnesses and evidence present at every hearing of the case, even at hearings at which the petitions are not on calendar, hearings on matters unrelated to the conservatorship petitions. This obviously is an impossibility.

RESPONDENT AND THE CALIFORNIA COURT OF APPEALS MAKE A MAJOR ISSUE OF THE FACT THAT PETITIONER STATED THAT MARTHA SWEET NEEDS A CONSERVATOR.

This is false. Petitioner agrees that Martha Sweet needs a care-provider to see to her necessities of food, shelter, clothing, etc., but this is not the same as a legal conservator.

The issue here is can a conservatorship be imposed upon someone who is in the legal custody of a family member who has taken care, described as "great" of that person for years, can such a person be seized and held for

three years without a trial on the merits of the custody? Can permanent Letters of Conservatorship be granted for that person without any noticed hearing or trial on the merits to the family who has legal custody by virtue of blood, historic custom, and a legal document designating such family member as holder of a durable power of attorney?

This respondent alleges and wants to claim that it has the right to seize every senile person without notice to her [or him] or to his family, to hold her indefinitely, confiscate her assets, and to impose a legal conservatorship without notice, trial or hearing on the merits.

The Court of Appeal, In the Conservatorship of Davis, 124 Cal. App. 3d 313, dismissesd the Public Guardian as temporary conservator with the power

to involuntarily confine a woman in a hospital on the grounds that if the proposed conservatee's family was amenable to having her reside at home, it was determinative of whether she was capable of providing herself with food, clothing, and shelter. The trial judge, over the Public Guardian's objection, gave the proposed conservatee's proposed jury instruction to the effect that, if the jury found the proposed conservatee capable of surviving safely in freedom by herself or with the help of willing and responsible family members or friends, the jury should find that she was not "gravely disabled," and did not require a conservator. The instruction was upheld upon appeal.

The Davis case is entirely in point here. Martha Sweet is not "a person who is unable properly to provide for her personal needs". She has a daughter,

petitioner, two granddaughters, and a son-in-law who have taken care of her for years in their own home, care described as "the best possible care" by her attending physicians. She does not need a legal conservatorship. Petitioner will prove this up beyond doubt if ever a trial on the merits is held. What has happened here is tortious interference with legally existing custody. Petitioner holds a durable power of attorney granted by Martha Sweet years ago to make all decisions of any kind for her. Respondent has violated all these rights, has taken custody and confiscated assets without any notice, due process or hearing on the merits whatsoever. Respondent seeks to give the impression that one judge handled the case or that there has been some consideration of the facts and merits. This is false: at various

times, three different Probate judges made decisions on different motions as well as several commissioners. Appellant has never been allowed to presesnt her witnesses, her practical nurse, her doctors, and the medical records of Martha Swet to any Court for consideration.

Respondent mentions Petitioner's former attorney, Sam Frizell, as having given concurrence or continuance of the petitions for conservator through June 19th, 1987. This statement is totally irresponsible. Mr. Frizell was present on June 12, 1987. He was astounded by the gratuitous granting of the permanent Letters on that date. The petitions for conservatorship were not before the Court on June 12th. The granting on that date mooted the petitions and made 15 day notice impossible before June 19, 1987.

Petitioner has been irreparably harmed by the order of the Probate Court. This government agency, respondent, has proven itself to be unfit to be the conservator of Martha Sweet. She has been physically abused under its care and it will do nothing to protect her because to do so would be to admit that the care it gives is substandard. She is a hostage of the federal lawsuit.

RELIEF REQUESTED:

Petitioner respectfully asks this Court on the basis of the above, to order the lower court to hold a trial on the merits;

To declare that 15-day notice pursuant to Probate Code 1822 cannot be interpreted to extend to two years without renewed notice before a trial;

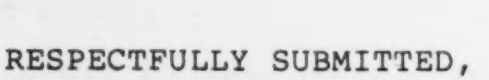
To declare that hearings of conservatorship involving custody of

elderly persons and control of their assets require the same procedural prerequisites of pre-trial meetings, at-issue memorandums, meetings of counsel, etc., as every other case which goes to trial.

To declare that California Probate Code, Section 1822, as interpreted by the California Court of Appeals and Supreme Court to extend notice indefinitely is in violation of the Fourteenth Amendment to the Constitution, a violation of due process and equal protection.

RESPECTFULLY SUBMITTED,

DATED: August 21, 1989,



JUNE MCGEE, PETITIONER

PROOF OF SERVICE

JUNE MCGEE, on oath deposes and states that on the 30th day of August, 1988, three copies of the Petition for a Writ of Certiorari were served by first class mail, postage prepaid, on the following persons:

Los Angeles County Public Guardian, c/o DeWitt W. Clinton, County Counsel, 500 W. Temple St., Room 648, L.A., CA 90012 (213) 974-1958

Peggy Almquist, Esq., 465 E. Union St., Suite 102, Pasadena, CA 91101, (818) 792-5925

Hon. Julius A. Leetham, Probate Court, Dept. 11, 111 No. Hill St., L.A., CA 90012

Court of Appeals, Second Appellate District, 3580 Wilshire Blvd., L.A., CA 90018; 3d Floor;

California Supreme Court, 3580 Wilshire Blvd., Fl., L.A., CA 90018

All persons resquired to be served have been served,

June McGee

JUNE MCGEE, Petitioner-Attorney
1645 E. California Blvd.
Pasadena, California 91106
(818) 577-6641

App. 1

ORDER DENYING REVIEW FILED MAY 3, 1989

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 7, No. B028864
S009416

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

CONSERVATORSHIP OF THE PERSON AND ESTATE OF MARTHA SWEET

JUNE MCGEE, Appellant,
v.
GORDON W. TREHARNE, Respondent.

Appellant's petition for review DENIED

[Signed] LUCAS

Chief Justice

App.2

NOT TO BE PUBLISHED

FILED FEB. 9, 1989

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

Conservatorship of the Person and Estate of MARTHA SWEET,	No. B028864 Super. Ct. No. P700713
JUNE MCGEE, Petitioner and Appellant,	
v.	
GORDON W. TREHARNE, Public Guardian,	
Respondent.	

APPEAL from an order of the Superior Court of Los Angeles County. Julius Leetham, Judge. Affirmed.

June McGee, in pro. per., for Petitioner and Appellant.

DeWitt W. Clinton, County Counsel, and Gary N. Miller, Deputy County

Counsel for Respondent.

In this conservatorship proceeding petitioner-appellant appeals from an order granting letters of conservtorship. We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

June McGee (petitioner and appellant) is the daughter of Martha Sweet (conservatee), who is 97 years old, bedridden, and senile.

On August 7, 1985, the Public Guardian (respondent) filed petitions for appointment of temporary and permanent conservator of the person and estate of Martha Sweet, declaring:

"Said proposed conservatee was hospitalized on or about February 1, 1985 at St. Luke's Hospital at which time she was observed in a filthy condition with a plugged indwelling

catheter, a blood infection stemming from a urinary tract infection, and other sighns of neglect. A referral was made to the office of the Public Guardian by Adult Protective Services on or about July 9, 1985. The Public Guardian's investigation has been prevented by said proposed conservatee's daughter, June McGee, who claims she is an attorney, refused to divulge her mother's condition or whereabouts, and threatens retaliatory lawsuits against the Public Guardian. Recently, the Public Guardian was informed that said proposed conservatee was hospitalized again and will require surgery for bedsores which have deteriorated parts of her body to the bone. According to information and belief, it is alleged that the proposed conservatee has been under the care and control of June McGee for a substantial period of time."

NOT TRUE

On that same date, August 7, 1985, the superior court granted the petition for temporary conservator, found that notice should be dispnsed with, and set a hearing date of Septmeber 13, 1985, for the permanent conservator petition, the expiration date of the temporary conservator order.

Only two days later on August 9, 1985, in what was to become a paper blizzard, both appellant and respondent filed ex parte petitions, appellant seeking appointment as temporary conservator and respondent seeking ratification of residence change and authority to fix a new residence for conservatee. Respondent's petition alleged that on August 8, the conservatee was in a hospital awaiting surgery when appellant, against medical advice, removed her from the hospital to appellant's home from which respondent,

with police escort, rescued the conservatee.

The court denied appellant's petition and overruled her objection to respondent's petition.

On August 14, 1985, the court appointed counsel for the conservatee: Peggy V. Almquist.

Periodically thereafter the court reappointed respondent temporary conservator, ruled upon innumerable appellant petitions, writs, motions, and proceedings, and continued the hearing date of respondent's petition for appointment as permanent conservator.

On June 12 and June 19, 1987, the court granted respondent's petition and appointed respondent conservator of Martha Sweet. It is from these orders appellant appeals. 1

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1. Probate Code section 2750 provides, in part: "An appeal may be taken from the making of . . . a . . . order . . .: (a) Granting . . . temporary conservatorship."

CONTENTIONS

Although variously phrased appellant's contentions are these:

1. Appellant was denied 15 days notice of the hearing on the petition for appointment of a conservator in violation of Probate Code section 1822, subdivision (a).

2. The petition for appointment of a conservator was not properly before the court on June 12 and June 19, 1987, and the court issued its order without a hearing.

DISCUSSION

1. Appellant was denied 15 days notice of the hearing on the petition for appointment of a conservator in violation of Probate Code Section 1822, subvdivision (a).

Probate Code section 1822, subdivision (a) provides: "At least 15 days before the hearing on the petition for appointment of a conservator, notice of the time and place of the hearing shall be given as provided in subdivisions (b), (c), and (d). The notice shall be accompanied by a copy of the petition."

Probate Code section 1822, subdivision (b) provides that notice "shall be mailed".

Respondent does not suggest that anytime in May 1987, 15 days before the

June 12, 1987 hearing, or anytime in early June 1987, 15 days before the June 19, 1987 hearing, he mailed notice to appellant as prescribed by section 1822.

Nevertheless we find that the notice requirements of section 1822 were fully satisfied and that appellant's contention is without merit.

On August 7, 1985 respondent mailed to appellant notice of petition for appointment of conservator of the person and estate of Martha Sweet. Appellant's receipt and knowledge of this notice is best evidenced by her objections to the petition and by her competing petition for appointment.

On September 13, 1985, the scheduled hearing date, the court continued the matter to December 1, 1985. Many similar continuances follwed including the one on May 29, 1987, when appellant was present by her co-counsel Sam

Frizell and the petition for appointment of conservator was continued to June 19, 1987.

Thus for almost two years before the June 12 and June 19, 1987 hearings, appellant had full notice, including the notice by mail prescribed by section 1822, subdivision (b), that respondent sought to be appointed conservator of Martha Sweet. No purpose would have been served by, and section 1822, subdivision (b) does not require, a duplicative mailed notice each time the court continued the petition hearing.

Appellant, present on May 29, 1987, by her co-counsel, had 21 days notice that the petition hearing date was scheduled for June 19, 1987. Any notice deficiency with respect to the June 12, 1987 hearing was harmless. (People v. Watson (1956) 46 Cal.2d 818.)

2. The petition for appointment of a conservator was not properly before the court on June 12 and June 19, 1987, and the court issued its order without a hearing.

As we have indicated, on May 29, 1987, the court continued the conservator petition hearing to June 19,1987. However, on June 12, 1987, the court considered this much belated petition apparently for two reasons. First, it had related matters before it. Appellant had filed a motion to remove respondent as conservator and to remove Ms. Almquist as attorney for conservatee, counsel for conservatee had filed opposition to this motion, and appellant had filed a response to Ms. Almquist's opposition -- all to be heard June 12, 1987.

Second, despite the disagreement

between appellant on the one hand and respondent and counsel for conservatee on the other regarding all other issues, there was unanimity concerning the need to establish a conservatorship for Martha Sweet.

Appellant had filed a petition requesting the establishment of such a conservatorship and requesting that she be appointed conservator. As part of her petition appellant declared that the conservatee was unable to provide for her personal needs, manage her finanacial resources, or resist fraud or undue influence. She further attested that "Martha Sweet, my mother, is 94 years old, a stroke victim, who suffers from constricted legs, cannot walk, and from failing memory (senility)."

On February 7, 1986, in connection with another motion, appellant conceded to the court, the same superior court

judge who presided on June 12 and 19, 1987, that Martha Sweet is "very senile" and "incompetent".

Counsel for conservatee consistently indicated that her client needed a conservator.

Thus, on June 12, 1987, the hearing judge who had heard and ruled on other motions in this proceeding and who had read the file, after denying appellant's motions to remove respondent as temporary conservator and Ms. Almquist as attorney for conservatee, ordered that the appointment of respondent as conservator be permanent. The order of appointment was without prejudice, the court explaining "[t]he fact is we keep this extension of temporary letters and it makes it a ridiculous thing. Here it has been months and months, and if they have grounds to remove you I'm going to hear them, and if necessary you'll be

removed." The court added:

"I want to leave you the opportunity to challenge it and to set out why there is something wrong with the conservatorship. . . "

Appellant's response to the court's appointment order was to urge that it be without prejudice, to which the court acceded. Appellant did not object on the ground that the issue was not properly before the court or that the court had made its order without a hearing. It is too late now to object on those grounds. (Evid. Code, Sect. 353; People v. Rogers (1978) 21 Cal.3d 542; People v. Flores (1968) 68 Cal.2s 563, 567.)

A week later, on June 19, 1987, when the parties were again before the same superior court judge appellant objected that "this court did grant permanent letters to the public guardian at that

time [June 12, 1987] although the petition was not pending before the court."

During the colloquy which followed it is clear that, since the letters of conservatorship had not yet been prepared or signed and in light of appellant's objections, the court again considered the issue of respondent's conservatorship petiton. Appellant was afforded an opportunity to be heard. She did not object on the ground that the issue was not properly before the court (on June 19, 1987) or that the court had made its June 19, 1987 order without a hearing. Instead appellant urged a six-month continuance because "we have a federal case pending which is set for trial on February second in the District Court at which point we will have a full jury trial, and these persons here are defendants and other

persons are defendants, and the whole matter will be decided openly at this trial."

The court denied appellant's continuance request and granted letters of conservatorship to respondent, commenting "I'm going to make the letters permanent because it seems to me it's so ridiculous that 2 years after I am still extending tempoary letters. I mean, we make a mockery of the system we have."

We hold that respondent's conservatorship petition was properly before the court on June 12 and 19, 1987, and that the court issued its order after conducting an adequate hearing.2

2. We note that the conservatee was represented by counsel at both hearings.

DISPOSITION

The order granting letters of conservatorhsip is affirmed. Costs on appeal are awarded to respondent.

NOT TO BE PUBLISHED.

WOODS (Fred), J.

We concur:

LILLIE, P. J.

JOHNSON, J.

DEWITT W. CLINTON, County Counsel
GARY N. MILLER, Deputy County Counsel
648 Hall of Administration
Los Angeles, California 90012

(213) 974-1958

FILED JUNE 24, 1987

Attorneys for Public Guardian

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

Conservatorship of the Person and Estate of	Case No. P700713
MARTHA SWEET,	ORDER DENYING MOTION FOR REMOVAL OF THE PUBLIC GUARDIAN AS CONSERVATOR, COUNTY COUNSEL ATTORNEY ALMQUIST, VACATING SUBPOENAS; AND SUSTAINING OBJECTIONS
Conservatee.	

Honorable Julius A. Leetham, Judge presiding:

Date of hearing: June 12, 1987-Dept. 11

Appearing: DeWitt Clinton, County

Counsel, by Gary N. Miller, Deputy County Counsel; appearing on behalf of Gordon W. Treharne, Public Guardian; attorney appearing on behalf of petitioner, June McGee, Samuel Frizell, Esq.; Peggy V. Almquist, Esq. appearing on behalf of Martha Sweet, temporary conservatee;

The Motion of June McGee for Removal of the Public Guardian as Temporary Conservator of Martha Sweet, County Counsel and Attorney Almquist, and to vacate Subpoenas, and the Objections thereto of Peggy V. Almquist, Esq., came on regularly for hearing on the above date.

On proof made to the satisfaction of the Court, the Court finds that:

1. All notices of the hearing have been duly given as required by law.

2. The motion of June McGee for Removal of the Public Guardian as

Temporary conservator of Martha Sweet; County Counsel; Attorney Almquist, and to Vacate subpoenas is denied.

3. The Objections of Peggy V. Almquist to said Motion for Removal of Public Guardian are sustained.

4. Tnere is no form of medical treatment for which the temporary conservatee has the capacity to give informed consent.

5. The temporary conservatee is not capable of completing as Affidavit of Voter Registration.

IT IS ORDERED that:

1. The Motion of June McGee for Removal of the Public Guardian as Conservator of Martha Sweet, County Counsel and Attorney Almquist, and to Vacate Subpoenas is denied.

2. The Objections of Peggy V. Almquist to said Motion for Removal are sustained.

3. The temporary conservatee lacks the capacity to give informed consent for medical treatment.

4. The temporay conservatee is disqualified from voting.

DATED: _____

_____

Hon. Julius A. Leetham
Judge of the Superior Court

DEWITT W. CLINTON, County Counsel
GARY N. MILLER, Deputy County Counsel
648 Hall of Administration
Los Angeles, California 90012

(213) 974-1958

FILED : JUNE 24, 1987

Attorneys for Public Guardian

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

Conservatorship of the Person and Estate of MARTHA SWEET, Conservatee.	Case No. P700713 ORDER APPOINTING PUBLIC GUARDIAN AS PERMANENT CONSERVATOR OF THE PERSON AND ESTATE OF MARTHA SWEET

Honorable Julius A. Leetham, Judge presiding:

Date of hearing: June 19, 1987-Dept. 11

Attorney appearing for Gordon W. Treharne, Public Guardian, DeWitt Clinton, County Counsel, by Gary N.

Miller, Deputy County Counsel; attorney appearing for temporary conservatee, Peggy V. Almquist; June McGee, appearing in pro per. The temporary conservatee was unable to attend the hearing.

The petition of Gordon W. Treharne, Public Guardian, for appointment of conservator of the person and estate of Martha Sweet; the objections thereto of June S. McGee; and the petition of June S. McGee for appointment of conservator of the person and estate came on regularly for hearing on the above date.

On proof made to the satisfaction of the Court, the Courtfinds that:

1. All notices of the hearing have been duly given as required by law.

2. The conservatee need not attend the hearing.

3. The Objections of June S. McGee should be denied.

4. The petition of June S. McGee

for appointment of conservator of the peron and estate should be denied without prejudice.

5. Martha Sweet is unable properly to provide for her personal needs for physical health, food, clothing or shelter, and is substantially unable to manage her financial resources or to resist fraud or undue influence.

6. The conservatee is an adult.

7. There is no form of medical treatment for which the conservatee has the capacity to give informed consent.

8. The conservatee is not capable of completing an Affidavit of Voter Registration.

IT IS ORDERED THAT:

1. The Objections of June S. McGee are denied.

2. The petition of June S. McGee for appointment of conservator of the person and estate is denied without

prejudice.

3. Gordon W. Treharne, Public Guardian, 320 West Temple Street, 15th Floor, Los Angeles, California 90012, Telephone (213), is appointed conservator of the person and estate of Martha Sweet, and Letters shall issue upon qualification.

4. The conservatee need not attend the hearing.

5. Bond is not required.

6. The conservatee lacks the capacity to give informed consent for medical treatment and the conservator of the person is granted the powers specified in Section 2355 of the Probate Code.

7. The conservatee is disqualified from voting.

DATED:_____

_____

Honorable Julius A. Leetham